

BEFORE THE  
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

THIS DECISION DESIGNATED FORMER BENEFIT  
DECISION NO. 5309 AS A PRECEDENT  
DECISION PURSUANT TO SECTION  
409 OF THE UNEMPLOYMENT  
INSURANCE CODE.

In the Matter of:

JAMES NEAL  
(Claimant)  
S.S.A. No.

AMERICAN PRESIDENT LINES, LTD.  
(Employer-Appellant)

PRECEDENT  
BENEFIT DECISION  
No. P-B-289

FORMERLY BENEFIT DECISION No. 5309
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The above-named employer on August 19, 1948, appealed from the decision of a Referee (SF-8973) which held that the claimant did not voluntarily leave his most recent work without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the Unemployment Insurance Code/.

Based on the record before us, our statement of fact, reason for decision, and decision are as follows:

STATEMENT OF FACT

The claimant, a member of the Marine Cooks and Stewards Union, was last employed as a utility man aboard the employer's steamship PRESIDENT PIERCE on a voyage from San Francisco to San Pedro and return during the period from June 1, 1948, to June 9, 1948. On the latter date the vessel was in the port of San Francisco when the claimant's employment terminated under circumstances hereinafter set forth.

On June 21, 1948, the claimant reopened a previously filed claim for benefits in a San Francisco

office of the Department. Thereupon, the employer protested and on June 30, 1948, the Department issued a determination which held that the claimant had voluntarily left his most recent work without good cause within the meaning of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/. The claimant appealed and a Referee reversed the determination of the Department. From such decision the employer filed the instant appeal.

On arriving in San Francisco the claimant's vessel was scheduled to sail on another voyage after the completion of loading operations and the claimant intended to continue as a member of the crew on this trip. However, at the end of his shift on June 9, 1948, the claimant went ashore to visit his home and during this visit he engaged in a domestic quarrel with his wife which resulted in his arrest and incarceration on a charge of assault on the evening of June 9, 1948. He was confined to jail for approximately one week and following his conviction by trial was released on probation for one year. In the interim the claimant's vessel had sailed with a replacement in his position.

#### REASON FOR DECISION

In the instant case the employer-employee relationship which existed was severed when the claimant's incarceration prevented him from returning to his work aboard a steamship. The issue then is whether the claimant may be disqualified under the provisions of Section 58(a)(1) of the Unemployment Insurance Act /now section 1256 of the code/ for the reason that he left his work voluntarily without good cause.

Generally speaking the contract of hire was brought to an end because the claimant was not able to continue furnishing his services to the employer on one of the latter's steamships because of a circumstance which occurred on the evening of June 9, 1948. In this connection it must be recognized that the nature of this circumstance in no way identifies the employer as the moving party in the severance of the employer-employee relationship. It then follows that the relationship was terminated either by the claimant or by circumstances over which neither the employer nor the claimant had any control. Although in a sense it might

be said that the claimant did not leave his position voluntarily because an individual, in practically every case, is incarcerated unwillingly, such a narrow view would ignore the obvious fact that it was the claimant who first set in motion the chain of circumstances which ultimately jeopardized his position. His conduct led to his arrest, the arrest to his incarceration and later his trial and conviction. In the final analysis then it was his voluntary and illegal action which prevented his continued employment.

In this connection it should be noted that circumstances closely analogous to those under consideration herein have been treated by appeals tribunals in a number of other jurisdictions, and the particular authorities have assessed disqualifications for voluntary leaving against individuals claiming benefits for unemployment resulting from their own illegal acts. Pennsylvania is one of the larger states to take this view (See Pa. Bd. of Rev. Dec. Nos. B-44-94-A-5443, March 27, 1947; and 44-99-G-1936, November 25, 1946). In the latter decision it was held that a truck driver who was incarcerated and his license suspended on a drunk driving conviction had left his work voluntarily when he was refused reemployment since he had "voluntarily engaged in conduct the natural and probable consequence of which was to place him in a position where he could not continue working in the employment which he held."

Delaware likewise adopted a similar view in the case of an individual arrested on the premises of his employer and subsequently convicted on a charge of non-support of his family (Del. Unemployment Compensation Commission Appeal Docket No. 712-A; January 8, 1946). In holding that the claimant was disqualified for benefits the Commission said, "It may be that the claimant left his job involuntarily, but . . . it cannot be said to have been without fault on his own part. He was arrested and convicted by a court of competent jurisdiction for failure to support his wife and family. Thus, he deliberately refused to assume a responsibility placed upon him by the law which was a deliberate and wilful act on his part. Under the circumstances, we are of the opinion that the claimant voluntarily left his job without good cause."

In Benefit Decision No. 5298-10914 we followed the Pennsylvania and Delaware cases, supra. In that case a truck driver, during his off-duty hours, was arrested and later convicted of drunken driving. As a result thereof, his license to drive was suspended for a period of one year and without such license he was unable to continue in his employment as a truck driver. We held under those circumstances that the truck driver voluntarily left his work.

In our opinion the above authorities are applicable to the circumstances in this appeal. While it would appear that the claimant herein may not have actually intended to bring about his unemployment, he did, nevertheless, voluntarily embark upon a course of conduct, the very nature of which he knew, or must be conclusively presumed to have known, would jeopardize his return to work within the allotted time. This despite the fact that as a seaman the claimant knew he had to be in condition to report back to his vessel at the proper time if he expected to remain a member of the crew. Accordingly, under the circumstances described herein, we conclude that the claimant's loss of employment was attributable to an act of volition on his part and in this respect tantamount to a voluntary leaving. Therefore, he is subject to disqualification for benefits under Section 58(a)(1) of the Act /now section 1256 of the code/ for the five week term prescribed in Section 58(b) /now section 1260 of the code/.

#### DECISION

The decision of the Referee is reversed. Benefits are denied.

Sacramento, California, March 3, 1949.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

MICHAEL B. KUNZ, Chairman

GLENN V. WALLS

PETER E. MITCHELL

Pursuant to section 409 of the Unemployment Insurance Code, the above Benefit Decision No. 5309 is hereby designated as Precedent Decision No. P-B-289.

Sacramento, California, April 6, 1976.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

DON BLEWETT, Chairperson

MARILYN H. GRACE

CARL A. BRITSCHGI

HARRY K. GRAFE

RICHARD H. MARRIOTT